Sheet Metal Workers International Association, Local Union No. 33, AFL–CIO (Cabell Sheet Metal & Roofing) ***and*** **William L. Caudill.** Case 6–CB–9223–2

February 27, 1995

DECISION AND ORDER

BY MEMBERS BROWNING, COHEN, AND TRUESDALE

On November 10, 1994, Administrative Law Judge Frank H. Itkin issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondent filed an answering brief and cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

[1] The judge did not address the Respondent's defense that the charge was untimely because more than 6 months had elapsed between the adoption of the Union's fine by the membership and the filing of the charge. However, the fine did not become final until the conclusion of the Union's internal appeal process, which was within the 10(b) period. Accordingly, the charge is not time-barred. *Sheet Metal Workers Local 75 (Owl Constructors)*, 290 NLRB 381 (1988).

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] In affirming the judge's dismissal of the complaint, we do not rely on the judge's findings that there was no contention that Caudill was engaged in collective-bargaining or grievance adjustment duties during the May 3 incident that led to the internal union charges, and that there was no contention that the internal union charges related to collective-bargaining or grievance adjustment activities on Caudill's part. We construe the complaint as having raised such claims. In affirming the judge's dismissal of the complaint, we have considered these contentions and we reject them. In our view, Caudill was not engaged in collective-bargaining, grievance adjustment, or contract interpretation duties during the incident that led to the union charges, and thus the union charges were not related to such duties. Thus, we affirm the judge's finding, in reliance on *NLRB v. Electrical Workers IBEW Local 340 (Royal Electric)*, 481 U.S. 573 (1987), that Caudill was disciplined for behavior unrelated to 8(b)(1)(B) functions.

We also do not rely on the judge's finding that no claim was made that the Respondent's internal union charges were intended to or did prevent Caudill from entering the Big Elm jobsite on May 3.

Clifford E. Spungen, Esq., for the General Counsel.
John F. Dascoli, Esq., for the Respondent.

DECISION

FRANK H. ITKIN, Administrative Law Judge. An unfair labor practice charge and amended charge were filed in this case on May 31 and July 14, 1994, respectively, and a complaint issued on July 15, 1994. The General Counsel alleged in the complaint that Respondent restrained and coerced Employer Cabell Sheet Metal & Roofing in the selection of its representatives for the purposes of collective bargaining or adjustment of grievances, in violation of Section 8(b)(1)(B) of the National Labor Relations Act, by fining Charging Party William Caudill on October 13, 1993, because he had exercised his supervisory authority as a representative of the Employer; by denying Caudill's appeal of the fine on December 23, 1993, resulting in the fine becoming final; and by filing a complaint in the West Virginia Circuit Court on April 8, 1994, seeking a judgment against Caudill in the amount of the fine with interest, costs, and attorney fees. Respondent filed an answer admitting and denying various allegations of the complaint and alleging that the Charging Party had failed to file a timely charge under Section 10(b) of the Act. Accordingly, a hearing was held on the issues raised in Morgantown, West Virginia, on September 22, 1994. On the entire record thus made, including my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

Cabell Sheet Metal & Roofing is admittedly an employer engaged in commerce as alleged.[1] Respondent Sheet Metal Workers International Association, Local Union No. 33, AFL–CIO is admittedly a labor organization as alleged. Charging Party William Caudill is employed by Cabell as its superintendent. He is also a member of Sheet Metal Workers Union, Local Union No. 24.

Caudill testified that Cabell is engaged in roofing and sheet metal work in Kentucky, Ohio, and West Virginia; that he has been superintendent for the Employer for about 3 years and also has been a member of Local Union No. 24; that he is in charge of Cabell's ''sheet metal operation''; that Cabell has no other superintendents; and that his duties include the following:

> I [Caudill] am in charge of all the sheet metal jobs for Cabell and I travel to various jobs throughout Kentucky, Ohio and West Virginia. I attend job meetings and check on the progress of the job and the men, and iron out any problems that Cabell has or the men have.

Caudill ''runs'' some six to seven ''jobs'' ''at one time.'' He ''reports to'' Company Vice President Frank Browning, who does not ''regularly go to these sheet metal jobs to check on them.'' And, ''all the rest of people in the hierarchy are under'' Caudill, which includes some 11 workers in the ''sheet metal operation.'' In addition, Caudill ''travels between the jobs usually spending about half a day at each job''; he ''visits'' the ''larger jobs about once every two

[1] Counsel for Respondent's posthearing motion to amend its answer to admit complaint commerce allegations is granted. See ALJ Exh. 1.

weeks'' and the ''smaller jobs'' ''at least once a week''; he ''determines'' ''when,'' ''where,'' ''which men'' and ''how many men are needed on a job''; he ''assigns,'' ''transfers'' and ''reassigns the guys'' ''according to their abilities''; and he ''decides whether to hire'' ''additional men'' ''from a local union hall'' when there is a ''need for additional men.''

Caudill generally explained that ''if employees have complaints on the job from the Company . . . they come to me''; he has ''the authority to adjust their grievances''; he has in fact ''adjusted their grievances''; ''if stewards have complaints on the job . . . they come to me''; he has in fact ''adjusted their grievances''; ''if a Union business representative or other Union officials have complaints on the job . . . they come to me''; ''if they have questions regarding the job . . ., they come to me''; ''if they have problems with the operation of the collective bargaining agreement . . . they come to me,'' and he has ''the authority to adjust those problems'' and has ''done it''; he has ''discussed verbal modifications of the collective bargaining agreement with Union business representatives''; he has ''adjusted safety questions''; and he has ''the responsibility to administer the collective bargaining agreement on the jobsite.'' (See Tr. 47–55.)

Caudill testified that his Employer is signatory to a collective-bargaining agreement with Local Union No. 24; it uses ''only Union men on each project''; and it occasionally ''does work outside of Local Union 24's jurisdiction'' within the jurisdiction of Respondent Local Union 33. Caudill, in the past, has ''hired'' for his Employer workers ''out of Local Union 33's hiring hall,'' and they were ''covered by'' and were ''paid'' the wages and benefits ''of Local 33.'' Caudill noted that his Employer, ''when working in Local Union 33's jurisdiction,'' is ''covered by'' the so-called ''two man rule'' as contained in the Sheet Metal Workers International Associations' ''Constitution & Ritual.'' (See G.C. Exh. 2, art. 16, sec. 9(q), pp. 86–87.) (See also the collective-bargaining agreements between Sheet Metal Contractors of West Virginia and Sheet Metal Workers International Association, Local Union No. 33, G.C. Exh. 3, art. 8, sec. 6, pp. 9–10; and Sheet Metal Contractors of Central Ohio and Sheet Metal Workers Local Union No. 24, G.C. Exh. 4, art. 8, sec. 6, pp. 6–7.) Under this rule, according to Caudill, ''an employer can send two men anywhere in the United States and Canada on any job that they have.''

Caudill testified that his Employer, during 1993, started ''work at the Big Elm Elementary School job in Shinnston, West Virginia,'' which is within the ''jurisdiction of Local 33.'' His Employer was also ''working at another jobsite in Local 33's jurisdiction at approximately the same time,'' ''the Nutter Fort School job.'' The Employer ''had bid these two jobs.'' Caudill previously had telephoned Kenneth Perdue, business representative of Local 33, requesting referral of Bill and Clark Kisner for these jobs. He explained:

> I [Caudill] knew that they had two men up there that I wanted to hire . . . they were two brothers . . . I wanted to put one on one job and put one on the other job as foremen and then hire all of the other men out of the Local 33 area. . . . He [Perdue] said that these two men were off, but they were on recall for another contractor, and he had other men.

Later, Caudill again telephoned Perdue ''and again asked for the two brothers to work on these two jobs . . . one to be foreman on one job and . . . one to be foreman on the other job.'' Caudill then

> explained to him [Perdue] that if I [Caudill] couldn't get these two men, I didn't know anybody else up here . . . I would have to send members out of Local 24 that I knew.

Caudill testified that, subsequently, about early spring 1993,

> I [Caudill] came up first and I worked with Gordon Simpson, and I reported myself and Gordon Simpson in at the Big Elm School job. . . . I worked . . . for a week . . . at the Nutter Fort School job . . . the next week I sent Tronnie Boone [also appearing in the record as Tronne Boone] up and Tronnie Boone worked there for a while . . . at the Nutter Fort School . . . and then I sent Mike Long to take Tronnie Boone's place. . . . Mike Long and Tronnie Boone [were] traveling back and forth between the Big Elm and the Nutter Fort job. Then, they started falling behind on the Big Elm job, so I came up and started to work with Richard Fife. Richard Fife reported in and I didn't feel like I needed to report in anymore because I had already reported in. I worked there for about a month with Richard Fife and then other jobs demanded more of my attention; so I had to pull off that job and I hired Tommy Thompson to take my place; I sent him to work with Richard Fife.

Caudill next recalled that on May 3, 1993, he returned to the Big Elm job. Caudill testified:

> Q. At some point did you see Perdue on the Big Elm jobsite?
> A. Yes. . . . It was about 10:30 in the morning.
> Q. Did you speak with him?
> A. Yes I did. . . . Perdue walked up and introduced himself to me . . . and Perdue asked how many men was on the job, and I said two. . . .
> Q. How many men were on the job?
> A. There [were] three.[2]
> Q. Why did you tell him there were only two on the job?
> A. I didn't want to cause any trouble.
> Q. You realized you were in violation . . . ?
> A. Yes.
> Q. . . . Perdue asked you for your dues receipt?
> A. . . . I told him I didn't have a dues receipt, I don't carry one and according to the constitution I don't have to carry a dues receipt. . . . [He] said that . . . ''I can send you home'' and I agreed with him.
> Q. Were you paid up to date on your dues?
> A. Yes.
> Q. So what happened next?
> A. After that he asked Tronnie Boone to see his dues receipt.

[2] Caudill acknowledged that he was ''working with his tools on the Big Elm job on the same day that Richard Fife and Tronnie Boone were.''

> Q. Did you talk about wages?
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> A. Yes. . . . [He] asked me how much money I made and I told him and then he asked Tronnie Boone how much money he made and then he asked how much expenses were paid. . . . I told him I made more than Local 33 allowed . . . and I told him the Company pays all of my expense money. . . . He asked Boone how much he made and Boone told him $25. [Perdue] says that is not what the Parkersburg contract called for. He said I should be paying $27 a day. . . . He made a threat against the Company; he said he could pull Cabell Sheet Metal's books and make Cabell pay all the backpay and then show him a copy of the canceled check where Cabell had paid.

Caudill later left the jobsite to attend to other Cabell work.

Caudill was later apprised by Local 33 in a letter dated July 14, 1993, that ''charges'' had been filed against him by Perdue and a trial would be held on September 11. (See G.C. Exh. 6.) Caudill determined to submit his written ''testimony'' to the Union on September 8, 1993. (See G.C. Exh. 7.) The Union thereafter sent Caudill on September 13, 1993, a ''copy'' of the ''minutes'' of his ''trial.'' (See G.C. Exh. 8.) The Union subsequently sent Caudill a letter dated October 13, 1994, apprising him as follows (see G.C. Exh. 9):

> This is to inform you of the decision of the trial committee accepted by the membership at the regular membership meeting on . . . October 12. . . . The decision of the trial committee found you to be in violation of . . . the Constitution & Ritual . . . as charged. . . . For the violation of Art 17, Section 1(b) . . . because brother Caudill knowingly violated the Constitution's two man rule and by purposely not calling in plac[ing] two other members in jeopardy, . . . a fine of $250.
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> [For the violation of] Art. 17, Section 1(e) . . . because of brother Caudill's supervisory position and having worked in the area numerous times before, for working for improper rates of pay, travel expenses and by applying undo [sic] influence over others causing them to work for improper rates of pay, etc. . . . a fine of $1500.
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> [For the violation of] Art. 17, Section 1(m) . . . because brother Caudill knowingly violated the working rules causing a loss of revenue to local trust funds and the local union by purposely placing other members in jeopardy for his own gain and causing a full time representative to expend a lot of time and unnecessary expense to reveal and verify his deception . . . a fine of $1500.

Caudill sent the Union his ''letter of appeal'' from the above decision on November 8, 1993. (See G.C. Exhs. 10, 11, and 13.) The Union thereafter notified Caudill in a letter dated December 27, 1993 (see G.C. Exh. 14):

> In reviewing your appeal, the letter notifying you of the decision of the trial was dated and mailed to you on October 13, 1993, and in order for your appeal to be timely, it should have reached my office no later than November 12, 1993. Therefore, since I did not receive your appeal until November 15, 1993, your appeal is three days late.

Caudill later wrote the Union on January 2, 1994, protesting that (see G.C. Exh. 15):

> I mailed my notice in plenty of time for your office [in Washington, D.C.] to [receive] it. The Cleveland office received the notice on the 12th day of November. You should have received the notice on the same day.[3]

The Union apprised Caudill by letter dated January 3, 1994 (see G.C. Exh. 16):

> We are in receipt of a letter from the International stating that your appeal . . . has been denied. . . . As a result, your fine . . . is due and owing immediately.

See also General Counsel's Exhibit 17, denying Caudill's ''request for reconsideration.'' Thereafter, on April 8, 1994, the Union filed a civil action against Caudill seeking to collect the fine, interest, costs, and attorney fees. (See G.C. Exh. 18.)[4]

Frank Perdue, business representative for Local 33, testified that he had filed the above charges and explained his reasons for doing so. (See Tr. 58–62.) As the record shows, Perdue's charges were predicated on Caudill's conduct while working on the Big Elm jobsite on May 3, 1993. Caudill was charged with violating that day the Union's ''two man rule,'' failing ''to report in,'' failing ''to carry a dues receipt,'' ''improper wages'' and ''misconduct detrimental to the Local.'' In addition, Perdue generally asserted that Caudill had never engaged in collective bargaining or contract interpretation or grievance adjustment on behalf of Cabell. Perdue's knowledge of Caudill's ''authority'' was admittedly limited to what he, Perdue, may have ''personally dealt with'' or ''observed'' in Local 33's ''jurisdiction.'' There is, however, no claim made here that Caudill, during the May 3 incident resulting in the above ''charges,'' was engaged in any collective-bargaining or grievance adjusting duties. There is also no claim made here that the Union's ''charges'' against Caudill were related to any collective-bargaining or grievance-adjusting activities on Caudill's part.

Dennis Talbott, financial secretary-treasurer for Local 33, similarly related his involvement in the disciplinary proceedings against Caudill. (See Tr. 62–65.) And, Thomas Thompson, a member of Local 24 who had worked for Cabell on the Big Elm jobsite, generally asserted that he had never discussed his rates of pay or hours of work or expenses with Caudill while working on the Big Elm job. Thompson also generally asserted that Caudill had never ''engaged in collective bargaining on behalf of Cabell'' or ''adjusted any grievances'' or ''interpreted any disputed contract clauses'' there or at another Employer jobsite. Thompson, however, acknowledged that he was ''only aware of what Caudill would have discussed'' with him or in ''his presence.'' Further, Gary Angel, union representative of Local 24, generally as-

[3] Appeals are governed by art. 19 of the Sheet Metal Workers International Associations' ''Constitution & Ritual.'' See G.C. Exh. 2.

[4] Employee Tronnie Boone was fined $250 for his involvement in the above incident with $200 ''held in abeyance providing there are no further violations for the next three years.'' See G.C. Exh. 5.

serted that he had never bargained with Cabell ''over contract terms'' because the Employer is a member of the Contractors Association, and that he has never had ''disputes with Cabell over contract interpretation'' or ''any grievance adjustments.'' Angel acknowledged that ''basic level job disputes are dealt with by the steward on the job.''[5]

Discussion

Section 8(b)(1)(B) of the National Labor Relations Act makes it an unfair labor practice for a labor organization or its agents

> to restrain or coerce . . . an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances.

The General Counsel contends here that Respondent violated the above statutory proscription ''by filing internal Union charges, fining and attempting to enforce said fines against William Caudill, a supervisor member employed by Cabell.'' (See G.C. Br. 7–17.) Respondent contends that ''General Counsel has failed to prove by a preponderance of the evidence that Local 33 violated the Act by interfering with the contract interpretation and grievance adjustment activities of Cabell.''

Recently, in *NLRB v. Electrical Workers Local 340 (Royal Electric)*, 481 U.S. 573, 580–586 fn. 8 (1987), the United States Supreme Court, in an opinion by Justice Brennan, restated the controlling principles of labor law, in pertinent part as follows:

> This section was enacted to prevent a union from exerting direct pressure on an employer to force it into a multiemployer bargaining unit or to dictate its choice of representatives for the settlement of employee grievances. S.Rep. No. 105, 80th Cong., 1st Sess., pt. 1, p. 21 (1947).
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> For two decades after enactment, the Board construed § 8(b)(1)(B) to prohibit only union pressure applied directly to the employer and intended to compel it to replace its chosen representative. In 1968, however, the Board substantially extended § 8(b)(1)(B) in *San Francisco-Oakland Mailers' Union No. 18 (Northwest Publications, Inc.)*, 172 NLRB 2173 (1968). The NLRB held that a union violates § 8(b)(1)(B) when it disciplines an employer-representative for the manner in which his or her § 8(b)(1)(B) duties are performed. . . . [T]he Board concluded that union pressure designed to alter the manner in which an employer-representative performs § 8(b)(1)(B) functions coerces the employer in its selection of the § 8(b)(1)(B) representative. . . . This Court has since indicated that the Board's expansion of § 8(b)(1)(B) in Oakland Mailers was at best ''within the outer limits'' of the section. *Florida Power & Light Co. v. Electrical Workers*, 417 U.S. 790, 805 (1974).
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> In *Florida Power* . . . [t]he Court held that § 8(b)(1)(B) cannot be read to prohibit discipline of employer-representatives for performance of rank-and-file work during a strike. . . . [stating] ''. . . that a union's discipline of one of its members who is a supervisory employee can constitute a violation of § 8(b)(1)(B) *only when that discipline may adversely affect the supervisor's conduct in performing the duties of, and acting in his capacity as, grievance adjuster or collective bargainer on behalf of the employer*. . . .''
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> The Court then found that the union's discipline of employer-representatives who crossed a picket line to do struck work could not adversely affect performance of § 8(b)(1)(B) duties. In so finding, the Court stressed that the employer-representatives ''were not engaged in collective bargaining or grievance adjustment, or in any activities related thereto. . . .''
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> The Court's language implicitly limited the application of the adverse-impact test: an adverse effect on future § 8(b)(1)(B) activity exists *only* when an employer-representative is disciplined for behavior that occurs *while he or she is engaged in § 8(b)(1)(B) duties*—that is, ''collective bargaining or grievance adjustment or . . . any activities related thereto.
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> . . . .
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> Four years later, in *American Broadcasting Cos. v. Writers Guild West, Inc.*, 437 U.S. 411 (1978), the Court . . . held that union discipline of employer-representatives who performed § 8(b)(1)(B) duties, specifically grievance adjustment, during a strike violated the employer's rights under § 8(b)(1)(B):
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> . . . .
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> The Court . . . held that, before a § 8(b)(1)(B) violation can be sustained, the NLRB must make a factual finding that a union's sanction will adversely affect the employer-representative's performance of collective-bargaining or grievance-adjusting duties. . . .
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> In *ABC*, therefore, the Board found, and the Court agreed, that union fines of employer-representatives *engaged in* grievance adjustment would have an adverse impact on the supervisor-member's future performance of that same § 8(b)(1)(B) duty. This holding is consistent with the analysis of the Court in *Florida Power*—that § 8(b)(1)(B) forbids only discipline for acts or

[5] I credit the testimony of Caudill as detailed above. His testimony is substantiated in large part by undisputed documentary evidence and he impressed me as a trustworthy and reliable witness. On the other hand, I was not impressed with the testimony of Perdue, Talbott, Thompson, and Angel. Their testimony was at times vague, incomplete, and unclear. Insofar as the testimony of Caudill differs with the testimony of Perdue, Talbott, Thompson, and Angel, I find that the testimony of Caudill is more complete and reliable. In particular, I credit the general testimony of Caudill with respect to his supervisory and contract interpretation and grievance-adjusting duties. However, as noted above and discussed further infra, there is no claim made here that Caudill, during the May 3 incident resulting in the above ''charges,'' was engaged in any collective-bargaining or grievance-adjusting duties. There is also no claim made here that the Union's ''charges'' against Caudill were related to his collective-bargaining or grievance-adjusting activities.

omissions that occur while an employer-representative is engaged in § 8(b)(1)(B) activities.[8]

[8] . . . Insofar as dictum in *ABC* suggests that a union may not discipline supervisor-members for acts or omissions that occur while the supervisor-member is engaged in supervisory activities *other than* § 8(b)(1)(B) activities, the dictum is inconsistent with *Florida Power*, and we disavow it.

The Court concluded in *Royal Electric* that a union does not restrain or coerce an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances when it disciplines a supervisor-union member who does not participate in collective bargaining or adjust contractual grievances, and, further, whose employer has not entered into a collective-bargaining agreement with the union.

In the instant case, the credible evidence of record amply establishes that Caudill was a ''supervisor'' of Cabell under Section 2(11) of the Act. Section 2(11) defines a ''supervisor'' as

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Caudill credibly testified that he has been superintendent for the Employer for about 3 years; that he is in charge of Cabell's ''sheet metal operation''; that Cabell has no other superintendents; and that his duties include the following:

> I [Caudill] am in charge of all the sheet metal jobs for Cabell and I travel to various jobs throughout Kentucky, Ohio and West Virginia. I attend job meetings and check on the progress of the job and the men, and iron out any problems that Cabell has or the men have.

Caudill ''runs'' some six to seven ''jobs'' ''at one time.'' He ''reports to'' Company Vice President Frank Browning, who does not ''regularly go to these sheet metal jobs to check on them.'' And, ''all the rest of people in the hierarchy are under'' Caudill, which includes some 11 workers in the ''sheet metal operation.'' Caudill ''travels between the jobs usually spending about half a day at each job''; he ''visits'' the ''larger jobs about once every two weeks'' and the ''smaller jobs'' ''at least once a week''; he ''determines'' ''when,'' ''where,'' ''which men'' and ''how many men are needed on a job''; he ''assigns,'' ''transfers,'' and ''reassigns the guys'' ''according to their abilities''; and he ''decides whether to hire'' ''additional men'' ''from a local union hall'' when there is a ''need for additional men.''

In addition, the credible evidence of record also amply establishes that Caudill has performed collective-bargaining and grievance adjustment duties and functions for his Employer. Caudill credibly testified that ''if employees have complaints on the job from the Company . . . they come to me''; he has ''the authority to adjust their grievances''; he has in fact ''adjusted their grievances''; ''if stewards have complaints on the job . . . they come to me''; he has in fact ''adjusted their grievances''; ''if a Union business representative or other Union officials have complaints on the job . . . they come to me''; ''if they have questions regarding the job . . . they come to me''; ''if they have problems with the operation of the collective bargaining agreement . . . they come to me,'' and he has ''the authority to adjust those problems'' and has ''done it''; he has ''discussed verbal modifications of the collective bargaining agreement with Union business representatives''; he has ''adjusted safety questions''; and he has ''the responsibility to administer the collective bargaining agreement on the jobsite.'' Cf. *Sheet Metal Workers Local 104 (Simpson Sheet Metal)*, 311 NLRB 758 (1993); and *Sheet Metal Workers Local 68 (DeMoss)*, 298 NLRB 1000 (1990).

The question remains, however, whether or not the Union's disciplining of Caudill in the instant case ''may adversely affect [this] supervisor's conduct in performing the duties of and acting in his capacity as grievance adjuster or collective bargainer on behalf of the employer.'' See *Royal Electric*, supra. There is no claim made here that Caudill, during the May 3 incident resulting in the above ''charges,'' was engaged in any collective-bargaining or grievance-adjusting duties for his Employer. There is also no claim made here that the Union's ''charges'' against Caudill were related to his collective-bargaining or grievance-adjusting activities. In addition, there is no claim made here that the Union's ''charges'' against Caudill were intended to or in fact prevented Caudill from entering the Big Elm jobsite on May 3 and thus prevent him from performing any collective-bargaining or grievance-adjusting duties on May 3, or anywhere else on any other day.

This record makes it clear that Caudill was a member of Local Union No. 24. His Employer was also signatory to a collective-bargaining agreement with Local Union No. 24. Caudill and his Employer were admittedly obligated to comply with certain union rules and regulations and pay certain wages and benefits when working outside of Local Union No. 24's jurisdiction. The Big Elm jobsite was situated outside of the jurisdiction of Local Union No. 24 and within the jurisdiction of Local Union No. 33. On May 3, Caudill, as he testified, went to the Big Elm jobsite and was ''working with his tools on the Big Elm job on the same day that Richard Fife and Tronnie Boone were.'' He was approached by Local Union No. 33 Business Representative Perdue and asked questions pertaining to his and his Employer's compliance with the Union's rules and regulations and payment of the required wages and benefits. When asked how many employees were on the job, he admittedly lied and claimed that only two employees were working there. He realized that he was then in violation of the Union's ''two-man rule'' but assertedly did not want to ''cause any trouble.'' He also admittedly did not have his dues receipt book and had failed to ''report in.'' And, apparently, his Employer was also not fully complying with Local Union No. 33's contractually required wage and benefit payments. Perdue, following an investigation, ''charged'' Caudill with violating the Union's ''two-man rule,'' failing ''to report in,'' failing ''to carry a dues receipt,'' ''improper wages'' and ''misconduct detrimental to the Local.'' The Union, following a trial, found that Caudill had ''knowingly violated the Constitution's two-man rule and by purposely not calling in plac[ed] two other members in jeopardy''; had been ''working for improper

rates of pay, travel expenses and . . . applying undo [sic] influence over others causing them to work for improper rates of pay, etc.''; and had ''knowingly violated the working rules causing a loss of revenue to local trust funds and the local union by purposely placing other members in jeopardy for his own gain and causing a full time representative to expend a lot of time and unnecessary expense to reveal and verify his deception.'' Again, none of Caudill's ''charged'' conduct is claimed to be related to his contract or grievance adjustment duties.

On this showing, I find and conclude that the Union's disciplinary treatment of Caudill will not ''adversely affect [this] supervisor's conduct in performing the duties of and acting in his capacity as grievance adjuster or collective bargainer on behalf of the employer'' and, consequently, is not violative of Section 8(b)(1)(B) of the Act as alleged. For, as the Court explained in *Royal Electric*,

> An employer representative who has been disciplined for acts or omissions that occur while he or she is engaged in Section 8(b)(1)(B) activity might well be wary about crossing the union when performing such duties in the future. But a supervisor member who has been disciplined for behavior unrelated to Section 8(b)(1)(B) functions is unlikely to react by altering his or her performance of Section 8(b)(1)(B) tasks.

I would therefore dismiss the complaint for this reason.[6]

CONCLUSIONS OF LAW

1. Respondent is a labor organization and Cabell Sheet Metal is an employer engaged in commerce as alleged.

2. The General Counsel has failed to prove that Respondent violated Section 8(b)(1)(B) of the Act as alleged, and therefore the complaint filed herein should be dismissed.

ORDER[7]

It is ordered that the complaint filed here be dismissed.

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[6] Under the circumstances, it is unnecessary for me to discuss the remaining contentions of Respondent.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.